

December 15, 2014

Julie McCarthy  
Brisbane School District  
1 Solano Street  
Brisbane CA 94005

Re: Your Request for Advice  
**Our File No. A-14-193**

Dear Ms. McCarthy:

This letter responds to your request for advice regarding your responsibilities as a Business Manager of the Brisbane School District and a board member/alternate of the San Mateo County School Insurance Group JPA (SMCSIG) under the conflict of interest disclosure provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), this advice is based solely on the facts presented.

### QUESTION

Is a settlement payment reportable on your Statement of Economic Interests (“Form 700”)?

### CONCLUSION

The settlement must be reported on your Form 700 if your community property share is more than \$500.

### FACTS

Your spouse filed complaints against his employer regarding whistleblower/discrimination and the lawsuit was recently settled out-of-court. His employer is a school district

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

(the “District”) that was represented by SMCSIG attorneys during this time and SMCSIG covered the District’s costs in this lawsuit and settlement.

You work as the Business Manager for the Brisbane School District and file a Form 700 every year. You also are a board member or alternate of SMCSIG. Although listed as a board member or alternate, you have never attended a SMCSIG meeting, nor have been involved in any part of the board and did not discuss the complaint or lawsuit with any board members or employees of SMCSIG. Although you did not attend or participate, you did not officially recuse yourself.

### ANALYSIS

The Act’s conflict of interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a “financial interest.” (Section 87100.) In addition, certain state and local public officials must file periodic Statements of Economic Interests (Form 700) disclosing those personal assets and interests that may be affected during the performance of their official duties. (Sections 87200 - 87350.) Public officials who are required to file statements of economic interests are either identified in Section 87200 (statutory filers) or designated in an agency’s conflict-of-interest code (designated employees or code filers). (See Sections 87300 and 87302.)

A source of income is an economic interest under Section 87103(c). “Income” is defined as “a payment received.” (Section 82030(a).) “Payment” is defined as “a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.) A settlement payment is therefore “income.” (*Herfert* Advice Letter, No. A-97-508.)

Additionally, an individual’s income includes the community property interest in the income of his or her spouse. (Section 82030(a).) Therefore you have a 50 percent interest in the amount that your spouse receives in his settlement. If your community property share of the settlement is \$500 or more, you will report the source of the income on your Form 700.

Under your facts, the true source of the income is the defendant District.<sup>2</sup> Your reporting obligations with respect to the District would be set forth in the conflict of interest code of your agency. Assuming that the District (a public agency) would not be a reportable source of income pursuant to your disclosure category in your code, you would have no reporting requirement. If the District is a reportable source, you would need to report it and the income on your Form 700.

---

<sup>2</sup> Generally, the source of a multiparty payment is the one who exercises control over the payments. Since the defendant District is ultimately liable for the settlement payment they would be the source of the payment despite the fact that SMCSIG, pursuant to an insurance contract, actually makes the payment. (*Gordan* Advice Letter, No. A-09-240.)

Finally, if the District comes before you in your official capacity within the twelve months following payment to your spouse, you will have a conflict of interest in any governmental decision foreseeably and materially affecting the source.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel,  
Legal Division

JWW:jgl